

DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-184120

DATE: July 2, 1975

MATTER OF: Securities Exchange Commission

DIGEST:

1. Where bidder fails to include in its bid a detailed statement of its business and technical organization, business reliability, facilities, and names and addresses of its representatives in all principal cities throughout United States as required in solicitation, its bid can be considered for award since missing items related to bidder's responsibility and can be supplied after bid opening.
2. It is not improper for agency to allow bidder to affix required corporate seal to bid bond after opening of bids since lack of seal is a minor informality.
3. Contention is made that low bid contained price in excess of cost limitation for furnishing duplication services under Freedom of Information Act and Advisory Committee Act, and in excess of schedule allegedly incorporated by reference in solicitation to reflect statutory limits. Record does not support contention that schedule was incorporated by reference and, if possible ambiguity existed as to incorporation of schedule, in view of exposure of bids and notice to bidders of statutory limitation cancellation of solicitation is not required. However, agency should make determination that bid prices do not exceed actual cost of duplication including reasonable factor for overhead and profit.

The Securities and Exchange Commission (SEC) has requested by letter of June 6, 1975, our decision concerning a protest by the A & M Reporting Company (A & M) against the award of a contract for stenographic reporting services under SEC solicitation No. 534 to the Technical Reporting Company (Technical), the apparent low bidder.

Basically, A & M contends that Technical should not be considered for award because: (1) it failed to include in its bid a detailed statement of its business and technical organization, business reliability, facilities, and the names and addresses of its

representatives in all principal cities throughout the United States; (2) it affixed a required corporate seal to the bid bond only after the opening of bids; and (3) its price for duplicated copies ordered before transcription for accelerated delivery exceeded statutory limitations and other limitations set forth in Table B of the solicitation. Subsequently, the CSA Reporting Company (CSA) also submitted a protest to the SEC against the award of a contract to Technical for the reason that it failed to include the statement referred to above in its bid. Moreover, CSA contends that the A & M bid, which is apparently second low, was deficient in not stating that the firm had a representative in California and inaccurate in claiming to have representatives in other states.

The contention that Technical's bid is nonresponsive because it failed to include the referenced statement is based upon a requirement in the solicitation that:

"Each bid must also be accompanied by a statement of facts in detail setting forth the business and technical organization of the bidder available for the performance of the required work, business reliability, and facilities then in existence for properly performing the work on a nation-wide basis, and the names and addresses of his representatives in all principal cities throughout the United States . * * *"

We are of the view that the information called for in the above-quoted provision concerns the responsibility of the bidder. Information concerning business and technical organization, business reliability, facilities, and business representatives relates to a bidder's ability to perform in accordance with the contract terms and not to its obligation to perform in conformity with the specifications. See 52 Comp. Gen. 389 (1972). Moreover, as we held in the cited decision, the stating of the requirement in mandatory terms does not convert a matter of responsibility into one of responsiveness.

We have consistently held that where a requirement for the submission of data is solely for the purpose of determining the capacity or responsibility of a bidder, the failure of the bidder to submit data in accordance with the solicitation's requirement is not fatal to the consideration of its bid, inasmuch as a bidder's capacity or responsibility may be determined on the basis of information submitted after the bid opening. Matter of BOW Industries, Incorporated, B-181828, December 12, 1974. Therefore, the failure of Technical to submit the required information with its bid does not require its rejection as nonresponsive.

Furthermore, the agency's allowing Technical to affix its corporate seal to the bid bond after bid opening was not improper. Rather, the lack of the seal on the bid bond was properly treated as a minor informality under section 1-2.405 of the Federal Procurement Regulations (1964 ed.). See B-164453, July 16, 1968.

A & M's last argument relates to Technical's bid of \$.75 per page as the cost for duplication of Commission transcript ordered by the public before transcription for delivery on an accelerated basis. It is contended that the price bid is in excess of the cost of duplication contrary to section 11 of the Advisory Committee Act, 5 U.S.C. App. I, §11, and subsection (a)(4)(A) of the Freedom of Information Act, as amended, 5 U.S.C. 552, and contrary to Table B of the current contract which establishes \$.30 as the cost for such duplication. A & M disputes the Commission's position that Table B was not a part of the solicitation and that the statutory limitation does not apply to the furnishing of copy on an accelerated basis. With regard to the latter point, it is A & M's position that the statutory mandate applies to the charges for duplication on whatever basis. With regard to the former point, it is argued that if Table B of the current contract is not considered a part of the solicitation the solicitation is defective because bidders were led to believe that it was incorporated and therefore to rely upon the \$.30 limitation set forth therein.

The solicitation included notice to the effect that pursuant to the statutory limitation duplicated copies of all transcripts will be made available at prices established therein not to exceed the cost as established in Table A of the Commission's contract in effect at the time of solicitation, which was attached as Exhibit C to the solicitation. Table A, entitled "Prices to the Public *- Regular Paper Copy Demand Service," sets a \$.15 limitation, and under the asterik states:

"Delivery costs are additional. Includes paper copies not shipped within the time set forth in Table B."

However, Table B is not included as part of the solicitation and the Commission says that it was omitted because it was not felt that the statutory limit applied to copies furnished on an accelerated basis.

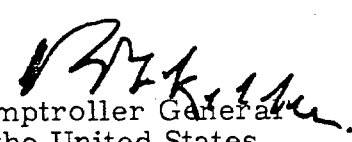
We do not agree with the Commission's position with regard to the applicability of the limitation. We are not aware of any basis on which it can be said that the statutes differentiate between

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"regular" and "accelerated" services. However, we are not aware of any requirement that the solicitation set forth cost limitations as established by the procuring agency so long as the public is adequately protected against paying unreasonably high prices for duplicating services. Thus we do not believe the subject solicitation was defective for failing to include a cost limitation for accelerated service. Nor do we believe that the reference on Table A to Table B was sufficient to incorporate Table B as a part of the solicitation. Furthermore, while bidders may have interpreted the absence of such provision in different ways, we do not believe this possible ambiguity requires cancellation in view of the exposure of bid prices and since bidders were adequately notified of the statutory mandate concerning cost limitations. Therefore, it is our view that award may be made on the basis of the present solicitation, subject to a determination by the Commission that the bid prices are not unreasonable, in accordance with the purpose of the statutory limitation to insure that the public is able to obtain copies of agency transcripts at the actual cost of duplication. In this connection, we have recognized that such cost may include a reasonable factor for overhead and profit. See B-179038, October 4, 1973, and February 13, 1974. However, as suggested in the cited case, bidding procedures for procuring these services should be established so as to insure that in future procurements such prices are reasonable.

Finally, the question which CSA raises as to the lack of an A & M representative in California and the alleged inaccuracies in its list of representatives in other areas are elements which the SEC must take into consideration in its determination of responsibility for A & M if such a determination becomes necessary.

Therefore, we do not believe that the protests of A & M and CAS against the award of the contract to Technical should be sustained.


Deputy Comptroller General
of the United States